Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

CIGNA HEALTHCARE OF CONNECTICUT, INC.,

Petitioner,

v.

ROBERT S. NAPOLETANO, ET AL. AND
F. BARRETT HOLLIS, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Connecticut

RESPONDENTS' BRIEF IN OPPOSITION

WILLIAM J. SWEENEY, JR.
(*Counsel of Record*)
THOMAS P. GRIFFEN
SILVER, WEBB, SWEENEY
& GRIFFEN
114 West Main Street
New Britain, CT 06051
(860) 225-6632

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964

QUESTIONS PRESENTED

1. Whether the Court should review a decision of the Supreme Court of Connecticut which held the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001 et seq., did not preempt common law and state statutory causes of action by physicians terminated from a healthcare network without just cause under the rationale of *New York State Conference of Blue Cross and Blue Shield Plans vs. Travelers Insurance Co.*, 115 S. Ct. 1671 (1995).

2. Whether the Court should review a decision of the Supreme Court of Connecticut which held ERISA did not preempt common law and state statutory cause of action by patients of physicians who have been terminated from a healthcare network without just cause under the rationale of *Travelers.*

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents Robert S. Napoletano, Jeffrey B. Steckler, Terrance K. Donahue, Robert Cosentino, Raphael Cooper, Paul Ceplenski, Ijaz Shafi, David Bass, David Belman, F. Barrett Hollis, Vinetta Hollis, Elaine Arnett, Ellen Gentile, Darlene Chiboyan, Margaret Cooper, Richard A. Johnson, Sharon W. Johnson and Dan Ludwinowicz respectfully request that this Court deny the Petition for Writ of Certiorari of CIGNA Healthcare of Connecticut, Inc. ("CIGNA") which seeks review of the judgment and opinion of the Connecticut Supreme Court in this case.

OPINIONS AND ORDERS BELOW

The Opinions and Orders of the Connecticut Supreme Court and the Connecticut Superior Court are accurately identified and reproduced in the Appendix to the petition.

STATEMENT OF THE CASE

The Statement contained in the Petition filed by CIGNA omits critical facts, accordingly the Petition does not contain all "facts material to the consideration of the question presented". Rule 14.1(g).

The Plaintiffs, Napoletano, Steckler, Donahue, Cosentino, Cooper, Ceplenski, Shafi, Bass and Belman ("*Napoletano*") are physicians who had participated in the healthcare network offered by the Defendant CIGNA.

The Plaintiffs Hollis, Hollis, Arnett, Gentile, Chiboyan, Cooper, Johnson, Johnson and Ludwinowicz (*"Hollis"*) are patients of the Plaintiff physicians and are participants and/or beneficiaries under various contracts of health insurance with CIGNA.[1] The *Hollis* Plaintiffs had commenced treatment with the *Napoletano* Plaintiffs. The *Napoletano* Plaintiffs had been for various periods of time participating physicians in the health care network offered by CIGNA. After medical treatment had begun the *Napoletano* Plaintiffs were unilaterally terminated from the network, even though the *Hollis* Plaintiffs had been provided with various assurances by CIGNA that their physician, who met and continued to meet CIGNA's credentialing standards, would continue to participate in their health care plan.

In August of 1994, two separate lawsuits were filed. Napoletano alleged an action for breach of contract, breach of implied covenant of good faith and fair dealing, tortious interference with business expectancies as well as violations of the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. §42-110a, et seq., as amended and the Connecticut Managed Care Act, Conn.

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[1] The specific contracts of insurance were not before the trial court. Since this case was decided by a Motion to Strike, Connecticut Practice Book §152 (App. 5), and judgment entered pursuant to Connecticut Practice Book §157 (App. 6), there is an insufficient record upon which to base a decision by this Court. This is significant because there are nine individual Plaintiffs in *Hollis*, employed by nine different employers, and each Plaintiff's contract of insurance and its terms are essential for a decision of this Court. These contracts were not before the trial court or the Supreme Court of Connecticut because of the nature of the judgment entered in this case.

Gen. Stat. §19a-166b. Hollis alleged common law acts of misrepresentation as well as violation of CUTPA, the Connecticut Unfair Insurance Practices Act ("CUIPA") pursuant to Conn. Gen. Stat. §38a-816 and the Managed Care Act.

CIGNA moved to strike all counts of both the *Hollis* and *Napoletano* complaints. The trial court agreed and granted CIGNA's motion to strike all counts of the complaint in both cases. The Plaintiffs in both cases appealed from the judgments of the trial court.

The Connecticut Supreme Court reversed and held:

> The essence of the Plaintiffs' claims do not relate to the administration of employee benefit plans. The claim and relief sought do not impermissibly, affect the plans – they do not attempt to prescribe the substantive administration aspects of a plan, such as a determination of an employee's eligibility, the nature and amount of employee benefits, the amount of an employer's contribution to a plan, and the rules and regulations under which the plan operates . . . The Plaintiffs' claims do not require the administrators to operate the plans differently, they do not force a plan to adopt a certain scheme of substantive coverage, they do not tell CIGNA what type of plan to adopt, what coverage to offer, or whom to cover.
>
> *Napoletano vs. Cigna Healthcare of Connecticut, Inc.*, 238 Conn. 216, 244, 680 A.2d 127 (1996).

The Connecticut Supreme Court based its decision on this Court's holding in *New York State Conference of Blue Cross & Blue Shield Plan vs. Travelers Insurance Co.*, ___ U.S. ___, 115 S. Ct. 1671 (1995); *District of Columbia vs. Greater*

Washington Board of Trade, 506 U.S. 125 (1992); *FMC Corp. vs. Holliday*, 498 U.S. 52 (1990); *Metropolitan Life Ins. Co. vs. Massachusetts*, 471 U.S. 724 (1985); *Shaw vs. Delta Air Lines, Inc.*, 463 U.S. 85 (1983).

REASONS FOR DENYING THE WRIT

The Petition raises no issue that warrants review. No significant or unsettled question of federal law is presented that has not already been settled by this Court. The Decision of the Connecticut Supreme Court is correct on the merits as to issues raised by this petition as well as the other state procedural and substantive grounds that were decided without regard for the questions raised by the petitioner. It is not contrary to ERISA or any of the applicable decisions of this Court.

SUMMARY OF ARGUMENT

The Petition raises no significant or unsettled questions of law that have not already been settled by this Court. Rule 10.(c). In *Travelers* the Court announced that a law that only affected indirectly the relative price of an insurance policy was no different than a myriad of state laws in areas traditionally subject to local regulations which Congress could not have possibly intended to eliminate. *Travelers*, supra at 1683. The Connecticut Supreme Court decided both *Hollis* and *Napoletano* in a way that is not in conflict with *Travelers*.

The common law and state statutory causes of action alleged by the Plaintiffs in *Napoletano* and *Hollis* do not

affect the employee benefit structure or their administration, do not bind employers or plan administrators to particular choices or preclude uniform administrative practice of their respective health plans. Finally the state law claims do not provide alternate enforcement mechanism to obtain plan benefits. *Travelers,* supra at 1678.

The decision of the Connecticut Supreme Court is also decided on other clear and independent state procedural and substantive grounds that do not involve federal questions and presumably are not under review by this petition. In addition to this fact, as was stated earlier, the facts and record below do not present issues to this Court that are of "sufficient general importance". See *United States vs. Nobles,* 422 U.S. 225, 241-242 n.16 (1975). Rule 10.

CIGNA argues that the decision below conflicts with this Court's decision in *Pilot Life Insurance Co. vs. Dedeaux,* 481 U.S. 41 (1987) and *Varity Corp. vs. Howe,* ___ U.S. ___, 116 S. Ct. 1065 (1996). This is not the case.

In avoiding the holding of the Connecticut Supreme Court that *Travelers* controls the outcome of this case CIGNA asserts that the decision in the court below is contrary to *Pilot Life* and that all claims presented are preempted per se. This argument is disingenuous. CIGNA conceded below that the statutory and common law causes of action were not preempted per se.[2] Further, it conceded that ERISA would not preempt a claim by Plaintiffs that CIGNA had failed to make the requisite filing as required by Conn. Pub. Act 94-235 (now codified

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[2] See *Napoletano,* supra at 243, n.25.

as Conn. Gen. Stat. 19a-166b); and while these issues are not raised by this petition they do show the weakness in CIGNA's argument for the granting of this petition. CIGNA has conceded that the claims raised below by *Napoletano* and *Hollis* are not preempted per se, and conceded that the claims arising under Conn. Gen. Stat. §19a-166b are not preempted, yet they maintain in this petition that whatever else is left is preempted. *Pilot Life* is only relevant if CIGNA were to maintain preemption per se which in light of its prior concession in the court below is not permissible. CIGNA also argues that the decision before the Court is in conflict with *Varity*, supra. This is not the case. *Varity* dealt with the proper interpretation of ERISA §502(a)(3), which is not an issue in the case at bar and was in no way affected by *Travelers*, supra. This can hardly be persuasive for the proposition advanced by CIGNA.

CIGNA argues that the decision below is in conflict with *Zuniga vs. Blue Cross and Blue Shield of Michigan*, 52 F.3d 1395 (6th Cir. 1995). In making this assertion CIGNA fails to note that the majority decision failed to recognize *Travelers*, supra[3] in its decision. This hardly is the kind of conflict that should justify granting the petition. Rule 10.(c).

For all of these reasons the petition should be denied.

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[3] The dissent in *Zuniga*, on the other hand, adopted the reasoning of *Travelers* and held that the breach of contract alleged by the Plaintiff was not preempted. *Zuniga*, supra at 1403.

I. The Decision Below Regarding the Napoletano Claim Is Not In Conflict With Decisions Of Federal Courts

The *Napoletano* respondents are the physicians who had treated the *Hollis* Plaintiffs as members of the CIGNA healthcare network. In a forty-five count complaint the physicians alleged they were licensed to practice in Connecticut, were participating physicians in the CIGNA healthcare network and that despite satisfying all of CIGNA's credentialling standards were unilaterally terminated without cause. Each physician also alleged that despite being board certified in his area of specialty and continuing to satisfy CIGNA's credentialling standards, he had been denied the opportunity to reenroll as a participating physician. The complaint additionally alleged that each plaintiff would remain in the directory of providers throughout the length of CIGNA's annual contract with the patient, that each plaintiff would have the choice to reenroll, and that it would be the decision of each plaintiff whether to reenroll.

In this case the trial court below ruled on a motion to strike, the function of which under Connecticut Practice is to test the legal sufficiency of a pleading. See Conn. Practice Book §152 (App. 5). The Connecticut Supreme Court in *Sheets vs. Teddy's Frosted Foods, Inc.*, 179 Conn. 471, 472, 427 A. 2d 385 (1980), stated that the role of the trial court is to admit all facts well pleaded, to construe them in favor of the plaintiff, and to determine whether the plaintiff has stated a legally sufficient cause of action.

In light of these allegations, the *Napoletano* Plaintiffs have asserted that CIGNA breached its contract with each

plaintiff, breached its obligation to deal in a manner consistent with good faith and fair dealing, tortiously interfered with each plaintiff's business and violated CUTPA and the Connecticut Managed Care Act. The complaint sought monetary damages and such other legal and equitable relief as the Court may deem necessary and proper for breach of contract, breach of good faith and fair dealing and tortious interference with business expectancies. The CUTPA count requested monetary damages, punitive damages pursuant to Conn. Gen. Stat. §42-110g(a) (App. 3), reasonable attorneys fees pursuant to Conn. Gen. Stat. §42-110g(d) (App. 3) and such other legal and equitable relief as may be. The Managed Care Act count requested declaratory judgment as to whether CIGNA violated Conn. Gen. Stat. §19a-166b, et seq., to compel compliance with the requirements of the act, to preclude plaintiffs' termination from the network based upon CIGNA's previous noncompliance with the act, and such other equitable relief as may be appropriate. The trial court struck all counts claiming they were preempted by ERISA. The decision below reversed the trial court in its entirety.

This factual and procedural background shows why the petition should not be granted.

The facts of this case are unique to this case. The allegations of the complaint must be accepted as well proven. *Sheets*, supra. That being the case, the assertion by the petitioner that the *Napoletano* claims are in conflict with *Zuniga* does not hold water. First of all, the petition fails to specify with sufficient accuracy, brevity and clarity what it means by state law causes of action for reinstatement and other relief asserted by physicians

terminated from a network which provides services to ERISA plans, and that alone should be fatal to the request for certiorari. Rule 14.4. Second, the trial court below struck all counts. Inasmuch as the Connecticut Supreme Court reversed this ruling in its entirety, do we infer, as the respondents believe, that the petitioner does not challenge the decision below in its entirety? If that is the case, then much of the *Napoletano* decision remains intact. Therefore any decision by this Court would theoretically be of a limited nature and not present the Court with any compelling reason for granting certiorari. Rule 10.

Further, as is stated elsewhere in this brief, the petitioner has conceded that the statutory and common law claims of the plaintiffs are not preempted per se; and it appears that the decision below was based on adequate and independent state grounds that are not presented by the petition. Clearly this is another indication that there is no compelling reason for granting certiorari. Rule 10.

The sum of all of the above reasons indicate that again, while the issues raised in *Napoletano*, rights of physicians in a managed healthcare network are in theory issues of great national concern, the facts presented by this case make it unique and of little relevance on a national scale.

The petitioners argument as to the applicability of *Zuniga*, supra, is also misplaced.

First of all *Zuniga*, presents a tortured procedural path upon which to base any similarity to the case at bar. While it does present a breach of contract claim within an ERISA preemption context, there are other issues that make it hard for the respondents to see its applicability in

such a way as to say there is a clear conflict between the decisions of *Napoletano* and *Zuniga*. Rule 10.(b).

Substantively it is also inapplicable. *Travelers* was decided by this Court on April 26, 1995. *Zuniga* was decided by the United States Court of Appeals for the Sixth Circuit on May 2, 1995. While it is understandable that the Sixth Circuit might not have been aware of *Travelers* given its date of decision, it is clear by the dissent's reference to it, *Zuniga*, supra at 1403, that the Court was aware of it yet failed to take it into account in its majority decision. While the rationale of the majority in *Zuniga* for ignoring *Travelers* is not the central issue here, one must question the petitioner in advancing an argument that *Napoletano* is in such direct conflict with *Zuniga* that it should justify this Court in granting its petition. Rule 10.(b).

The respondents have shown that *Zuniga* is neither procedurally nor substantively in conflict with the present case so as to warrant the granting of the petition.

II. The Decision Below Regarding The Hollis Claims Is Not Contrary To Decision Of This Court And Of The Federal Courts Of Appeal.

The Plaintiffs in *Hollis* are patients who had commenced treatment with the Plaintiff physicians in *Napoletano*. The *Napoletano* Plaintiffs were participating physicians for varying periods of time in the healthcare network offered by CIGNA Healthcare of Connecticut Inc. During the course of treatment the *Napoletano* Plaintiffs were unilaterally terminated from the CIGNA network. The nine *Hollis* Plaintiffs filed a thirty-six count

complaint. F. Barrett Hollis, typical of the other Plaintiffs, alleged that he had commenced medical treatment with a physician who participated in CIGNA's Healthcare Network. After he was treated for several months, CIGNA sent him a letter announcing changes to its healthcare network and removed his physician from the network. CIGNA sent another letter stating that his doctor chose not to enroll in its plan and that his case would be transferred to another participating provider. CIGNA then placed an advertisement in the Hartford Courant misrepresenting which physicians had been allowed to file an application to reenroll in CIGNA's network. The advertisement contained the names of Hollis' physician. Additionally, CIGNA sent Hollis a directory of providers which included his physician but failed to inform him that participating physicians could be removed without notice. These acts by CIGNA provided the basis for *Hollis*.

The Connecticut Supreme Court applied the rationale of *Travelers* to the facts presented by *Hollis* and found:

> The essence of the Plaintiffs' claims do not relate to the administration of employee benefits plans. The claim and relief sought do not impermissibly affect the plan – they do not attempt to prescribe the substantive administrative aspects of a plan, such as a determination of an employee's eligibility, the nature and amount of employee benefits, the amount of an employer's contribution to a plan, and the rules and regulations under which the plan operates. *Napoletano*, supra at 243, 244.

The Connecticut Supreme Court took care to conform its decision in this case to the decision of this Court. The

court below, by Justice Katz, began by analyzing the "ERISA quagmire", *id.* at 233; it conducted an exhaustive review of this Court's rulings on ERISA preemption with particular attention to *Travelers* and its significance. *Id.* at 238.

CIGNA argues that the *Hollis* claims are really claims to enforce a plan and, therefore, subject to preemption and ERISA's civil enforcement provision under ERISA §502(a)(1)(B), 29 U.S.C. §1132(a)(1)(B). CIGNA vaults to the enforcement mechanism without adequately dealing with whether or not the claim and relief sought relates to an ERISA plan.[4]

The Court below analyzed the phrase "relates to" by reviewing the intent of Congress and pertinent cases of the Court on that issue, e.g. *Shaw,* supra, at 96, 99; *Fort Halifax Packing Co. vs. Coyne,* 482 U.S. 1, 11 (1987); *Ingersoll-Rand Co. vs. McClendon,* 498 U.S. 133, 139 (1990); *District of Columbia,* supra, at 130 n.1; *Napoletano,* supra, at 234-238.

It also reviewed decisions of Courts of Appeal after *Travelers*[5], e.g. *Thiokol Corp., Morton International, Inc. vs. Roberts,* 76 F.3d 751, 757 (6th Cir. 1996); *Safeco Life Ins. Co. vs. Musser,* 65 F.3d 647, 653 (7th Cir. 1995); *Boyle vs.*

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[4] As was stated, *ante,* n.1, the specific contracts for the nine *Hollis* Plaintiffs are not part of the record given the state of the pleadings upon which judgment was entered.

[5] Notably missing from CIGNA's petition.

Anderson, 68 F.3d 1093, 1099, 1102-1105 (8th Cir. 1995), cert. denied, ___ U.S. ___, 116 S. Ct. 1266 (1996).[6]

The Connecticut Supreme Court in adopting the *Travelers* rationale went beyond the unhelpful text of §514(a) and the frustrating difficulty of defining its key terms such as "relate" to and looked instead to the objectives of the ERISA statute as a guide to the scope of the state laws that Congress understood would survive preemption. *Napoletano*, supra.

The Court in *Travelers*, referring to the objective of ERISA and its preemption clause found that Congress intended ERISA to preempt at least three categories of state laws that have some connection to an ERISA plan. First, Congress intended ERISA to preempt state laws that mandate employee benefit structures or their administration. *Travelers*, supra, at 1678. Second, Congress intended to preempt state laws that bind employers or plan administrators to particular choices or preclude uniform administrative practice, thereby functioning as a regulation of an ERISA plan itself. *Id.* at 1679. Third, Congress intended to preempt state laws providing alternative enforcement mechanisms for employees to obtain ERISA plan benefits. *Id.* at 1167.

CIGNA asserts that the state law claims regarding misrepresentation are really state law claims "to enforce" an employee benefit plan and therefore preempted. It is

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[6] Respondents are aware that this Court has granted certiorari to a relevant 2d Cir. decision, *DeBuono vs. NYSA-ILA Medical and Dental Service Fund* (No. 95-1594), cert. granted, 117 S. Ct. 292 (Oct. 14, 1996)

difficult to understand and respond to this assertion when the question presented fails to state with specificity to which claim of *Hollis* the petitioner is referencing.[7] See Rule 14.4. This confusion is compounded by the action of the petitioner where it conceded below that the statutory and common law causes of action are not preempted per se *Napoletano,* supra at 243 and when it conceded that Conn. Gen. Stat. §19a-166b is not preempted by ERISA. *Id.* at 246, 247.

The contradiction in the petitioner's position is obvious. This shows why the issues presented here only have relevance to the parties and not to the public at large. Simply stated, there may well be issues of national significance associated with this case but the facts and record as developed below mandate that any significant and important decision regarding these issues will have to come from a case other than the one at bar. Rule 10. The failure of a petitioner to present with accuracy, brevity and clarity what is essential to a ready and adequate understanding of the points requiring consideration will be sufficient grounds for denying the petition. Rule 14.4.

Even if we ignore these defects, the decision below is consistent with applicable prior decisions of this Court. The Court below performed a detailed analysis of the phrase "relates to" in accordance with the intent of Congress in enacting ERISA. It made reference to *Shaw vs. Delta Air Lines,* supra, *District of Columbia,* supra, and *Ingersoll-Rand,* supra, for the position that some state

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[7] *Hollis* alleged common law misrepresentation and violations of Conn. Gen. Stat. §42-110b, Conn. Gen. Stat. §38a-816 and Connecticut Managed Care Act, Conn. Gen. Stat. 19a-166b.

actions may affect employee benefits plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law relates to the plan. It noted that these cases were the exception to the broad approach this Court has taken in the past to the issue of preemption. It interpreted *Travelers* to be a retreat by this Court from the expansive view it had taken in the past. *Napoletano*, supra at 237.[8] This approach is well founded.

CIGNA urges this Court, without so stating, to return to a broad preemptive approach, ignoring what the respondents feel is at the heart of the Court's current thinking:

> Our past cases have recognized that the Supremacy Clause, U.S. Const. Art. VI, may entail preemption of state law either by express provision, by implication, or by a conflict between federal and state law . . . and yet, despite the variety of these opportunities for federal preeminence, we have never assumed lightly that Congress had derogated state regulations but instead have addressed claims of preemption with the starting presumption that Congress does not intend to supplant state law . . . Indeed, in cases like this one, where federal law is said to bar state action in fields of traditional state regulations . . . we have worked on the 'assumption' that the historic police powers

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[8] In addition to the case cited in the opinion, see *Crull vs. Gem Ins. Co.*, 58 F.3d 1386 n.3 (9th Cir. 1995); *Napoletano*, supra at 238, see also *Coyne & Delaney Co. vs. Selman*, 98 F.3d 1457, 1469, 1470 n.14 (4th Cir. 1996); see also Catherine L. Fisk, *The Last Article About The Language of ERISA Preemption? A Case Study of the Failure of Textualism*, 33 HARV. J. on Legis. 35 (1996).

> of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress . . . (case omitted) *Travelers,* supra at 1676.

CIGNA also boldly asserts that the decision of the Connecticut Supreme Court is in direct conflict with decisions of every federal court of appeals. (pet. brief p. 10).

The petitioner's brief fails to show how decisions cited by it and decided prior to *Travelers* support this assertion. The cases cited by the petitioner after *Travelers, Crull,* supra and *Wolf vs. Reliance Std. Life Ins. Co.,* 71 F.3d 444, 447 (1st Cir. 1995) are clearly distinguishable on their facts from those presented in this case. The petitioner conveniently ignores the Federal Circuits following *Travelers* that the Connecticut Supreme Court referred to, e.g. *Thiokol Corp,* supra (challenge to Michigan Business Tax not preempted); *Safeco,* supra (suit on fees imposed by Wisconsin on health insurer not preempted; and *Boyle,* supra (challenge to provide a Minnesota health care reform legislation not preempted).

CIGNA also asserts that the *Hollis* misrepresentation claims, again without specifically identifying them, have clearly been preempted by *Varity,* supra. *Varity* can hardly be applicable to a decision based on *Travelers* when *Varity* fails to refer to *Travelers.* The rationale is clear. *Varity* concerned representations made to plan beneficiaries by their employer concerning their benefit plans. Employees filed suit under ERISA. The relevant question decided was whether ERISA §502(a)(3) authorized an action for individual relief. The petitioner on the other hand believes that the *Hollis* plaintiffs have a claim under 502(a)(1)(B). (pet. brief P.9). This inconsistency

shows why reference to *Varity* is unpersuasive on the substance of the issue as well.

Further, if we assume, arguendo, that the *Hollis* claims for misrepresentation are preempted as CIGNA urges, that still would leave all non-misrepresentation claims that the Plaintiffs have asserted intact. If that result were to occur a decision by this Court would clearly be of limited significance and have no effect beyond that to the parties to the lawsuit, as the remainder of the lawsuit will be allowed to proceed.

Therefore, it is clear that the decision below is not in conflict with prior decisions of this Court and no special or important reason exists for the granting of this petition.

III. The Decision Below Does Not Undermine Congressional Policies That Underlie ERISA

The decision below is an appropriate decision by the highest court of a state in response to allegations of a general business tort nature. It applied the reasoning of this Court in *Travelers* to claims by the *Hollis* and *Napoletano* plaintiffs concerning action taken by CIGNA in the State of Connecticut. It is a matter of local concern. The petitioner attempts to interject issues that are totally extraneous to the decision at bar. While the issues of ERISA welfare plans and managed care are of national importance, the facts and holding of this case do not present this Court with the case upon which to promulgate a general pronouncement on the relationship between ERISA preemption and managed care.

Further, by raising these issues along with reference to "any willing provider" or other similar regulation (See pet. brief 18-20), one must ask if the petitioner is seeking review under Rule 10.(b) (conflict between state court of last resort and federal court of appeals) or Rule 10.(c) (a state court has decided an important question of federal law which has not been, but should be settled by this Court) or merely just an advisory opinion.

The petitioner has failed to show how the decision below has undermined the congressional policies that underlie ERISA. Rather it offers an unfocused legal proposition, concerning ERISA preemption and managed care issues, to this Court that were not presented or decided by the opinion below. The petitioner has the duty to present its argument with accuracy, brevity and clarity. Rule 14.4. Since it has failed to do so, the petition should be denied. While litigation over ERISA preemption and laws regulating managed care may very well increase, that can hardly be sufficient reason, let alone compelling reason, to overcome the defects in CIGNA's petition.

Accordingly, the petitioner fails to state sufficient grounds to grant the petition and, therefore, it should be denied.

CONCLUSION

For all of the above reasons this Court should deny the Petition for Certiorari on all questions presented.

Respectfully submitted,

WILLIAM J. SWEENEY, JR.
Counsel of Record
THOMAS P. GRIFFEN
SILVER, WEBB, SWEENEY & GRIFFEN
114 West Main Street
New Britain, CT 06051
Tel. 860/225-6632

Counsel for Respondents

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§ 38a-815. Unfair practice prohibited.

No person shall engage in this state in any trade practice which is defined in section ***38a-816*** as or determined pursuant to sections 38a-817 and 38a-818 to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance, nor shall any domestic insurance company engage outside of this state in any act or practice defined in subsections (1) to (12), inclusive of section ***38a-816***. The commissioner shall have power to examine the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by sections 38a-815 to 38a-819, inclusive. When used in said sections, "person" means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers and adjusters.

§ 38a-816. Unfair practices defined

The following are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(1) Misrepresentations and false advertising of insurance policies. Making, issuing or circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement, sales presentation, omission or comparison which: (a) Misrepresents the benefits, advantages, conditions or terms of any insurance

policy; (b) misrepresents the dividends or share of the surplus to be received, on any insurance policy; (c) makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy; (d) is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates; (e) uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof; (f) is a misrepresentation for the purpose of inducing or tending to induce to the lapse, forfeiture, exchange, conversion or surrender of any insurance policy; (g) is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or (h) misrepresents any insurance policy as being shares of stock.

(2) False information and advertising generally. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

§ 42-110g. Action for damages. Class actions. Costs and fees. Equitable relief

(a) Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment of a method, act or practice prohibited by section 42-110b, may bring an action in the judicial district in which the plaintiff or defendant resides or has his principal place of business or is doing business, to recover actual damages. Proof of public interest or public injury shall not be required in any action brought under this section. The court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper.

(b) Persons entitled to bring an action under subsection (a) of this section may, pursuant to rules established by the judges of the superior court, bring a class action on behalf of themselves and other persons similarly situated who are residents of this state or injured in this state to recover damages.

(c) Upon commencement of any action brought under subsection (a) of this section, the plaintiff shall mail a copy of the complaint to the attorney general and the commissioner of consumer protection and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the attorney general and the commissioner of consumer protection.

(d) In any action brought by a person under this section, the court may award, to the plaintiff, in addition to the relief provided in this section, costs and reasonable attorneys' fees based on the work reasonably performed by an attorney and not on the amount of recovery. In a

class action in which there is no monetary recovery, but other relief is granted on behalf of a class, the court may award, to the plaintiff, in addition to other relief provided in this section, costs and reasonable attorneys' fees. In any action, brought under this section, the court may, in its discretion, order, in addition to damages or in lieu of damages, injunctive or other equitable relief.

(e) Any final order issued by the department of consumer protection and any permanent injunction, final judgment or final order of the court made under section 42-110d, 42-110m, 42-110o or 42l-110p shall be prima facie evidence in an action brought under this section that the respondent or defendant used or employed a method, act or practice prohibited by section 42-110b, provided this section shall not apply to consent orders or judgments entered before any testimony has been taken.

(f) An action under this section may not be brought more than three years after the occurrence of a violation of this chapter.

(g) In any action brought by a person under this section there shall be a right to a jury trial except with respect to the award of punitive damages under subsection (a) of this section or the award of costs, reasonable attorneys' fees and injunctive or other equitable relief, under subsection (d) of this section.

§ 152. Motion to Strike – In General

Whenever any party wishes to contest (1) the legal sufficiency of the allegations of any complaint, counterclaim or cross claim, or of any one or more counts thereof, to state a claim upon which relief can be granted, or (2) the legal sufficiency of any prayer for relief in any such complaint, counterclaim or cross complaint, or (3) the legal sufficiency of any such complaint, counterclaim or cross complaint, or any count thereof, because of the absence of any necessary party, or (4) the joining of two or more causes of action which cannot properly be united in one complaint, whether the same be stated in one or more counts, or (5) the legal sufficiency of any answer to any complaint, counterclaim or cross complaint, or any part of that answer including any special defense contained therein, that party may do so by filing a motion to strike the contested pleading or part thereof.

A motion to strike on the ground of the nonjoinder of a necessary party must give the name and residence of the missing party or such information as the moving party has as to his identity and residence and must state his interest in the cause of action.

§ 157. Motion to Strike – Substitute Pleading; Judgment

Within fifteen days after the granting of any motion to strike, the party whose pleading has been stricken may file a new pleading; provided that in those instances where an entire complaint, counterclaim or cross complaint has been stricken, and the party whose pleading has been so stricken fails to file a new pleading within that fifteen-day period, the court may upon motion enter judgment against said party on said stricken complaint, counterclaim or cross complaint. (1978.)